



Civil Resolution Tribunal

Date Issued: March 29, 2018

File: SC-2017-002703

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Maxwell v. Clisby et al*, 2018 BCCRT 104

B E T W E E N :

Gordon Maxwell

APPLICANT

A N D :

Andrie Dayle and Wayne Clisby

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Mary Childs

INTRODUCTION

1. I note the spelling of the respondent's name was corrected in her Dispute Response to "Andrie" from "Andriea", and I have amended the style of cause above accordingly.

2. The applicant, Gordon Maxwell, lives next door to the respondents, Andrie Dayle and Wayne Clisby. The two properties had a wooden fence between them. In May 2017 the applicant replaced the old fence with a new cedar fence. He says that the respondents agreed to reimburse him for part of the cost of the new fence.
3. The respondents say that they did not agree to pay for any part of the fence. The applicant asks for the following:
 - a. reimbursement of \$1,150 in out of pocket costs;
 - b. reimbursement of \$250 for his time spent removing the old fence;
 - c. reimbursement of \$250 for removing the debris of the old fence, including dump fees;
 - d. reimbursement of \$800 for his time spent trying to get the respondents to reimburse him for the other amounts; and
 - e. reimbursement of \$125 in tribunal fees.
4. The applicant and the respondents are all self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions. No oral hearing was requested and I find that an oral hearing is not required.

7. This dispute amounts to a “he said, they said” scenario with both sides calling into question the credibility of the other about certain alleged facts. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Did the respondents agree to pay the applicant for some of the costs of the new fence?
 - b. If the respondents agreed to pay, how much should they pay?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this the applicant bears the burden of proof, on a balance of probabilities. That means he must provide evidence that persuades me that his version of events is more likely than not. Otherwise, I must dismiss his claim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The applicant says that he had discussions with the respondents about replacing the old fence, and that in those discussions they agreed to split the cost of removing the old fence and replacing it with a new one. The respondents say that they never agreed to split the cost of the fence. They say the discussions were only about the height and style of fence they would want.
13. The applicant's evidence includes pictures of the old and new fencing, as well as a topography survey and photographs intended to address the question of whether the fence is on his property (as the respondents assert) or is on the border between the two properties. The applicant says the fence is exactly on the property line. The respondents have submitted their own survey documents and photographs which they say demonstrate that the fence is entirely on the applicant's property.
14. I find this property line evidence does not answer the central question of whether the respondents agreed to pay part of the cost of the fence. If they did agree to pay, it does not matter whose property the fence is on. Even if I found that the fence was entirely on the applicant's property, that would not prevent the respondents being obliged to pay a portion of the costs if they agreed to pay. Similarly, even if the fence was on a shared border, that does not mean the respondents must pay if there was no agreement to pay. I make no finding on the question of where the fence is situated because it is not relevant to the applicant's claim.

15. The applicant has the burden of proving, on a balance of probabilities, that there was an agreement. If the parties did not agree that the costs were to be shared, there is no contract between them.
16. The legal test for whether a contract exists asks whether a reasonable person looking at all the facts would conclude that there was a definite agreement between the parties. The facts to be considered are what the parties said or did, not what they were thinking or what they believed the other side was thinking.
17. In this case the applicant has not provided any evidence, beyond his own submissions, that the respondents agreed to split the costs of the new fence. An oral agreement is just as legally binding as a written one, but it is harder to prove. In this case the parties each say different things about what they discussed, and there is no other evidence to support either side's version of events. I find that the applicant has not proven that the respondents agreed to pay. While I accept that he believes there was an agreement, his submission is not sufficient to prove that this belief is accurate. For that reason his claim must fail.
18. Further, to be successful, the applicant has to prove not only that the respondents agreed to pay, but also what costs were to be shared. He has provided a list of the costs he says he incurred, but for the most part he has not submitted any receipts or invoices supporting his claims for the cost of labour or materials. Even if I had found in the applicant's favour on the question of what the parties agreed, I would be unable to make an award of compensation without more evidence on this point.
19. The applicant was unsuccessful. As such, in accordance with the tribunal's rules, I find the applicant is not entitled to reimbursement of his tribunal fees or claimed dispute-related expenses. He asked to be compensated for his time spent trying to get the respondents to pay, but this is not the sort of expense that the tribunal would order the respondents to pay, even if the applicant was successful. This tribunal does not usually permit parties to recover any legal fees, nor does it award

compensation for a party's time spent trying to resolve the dispute. I see no reason to deviate from that practice here.

ORDER

20. The applicant's dispute is dismissed.

Mary Childs, Tribunal Member